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Attorney Docket: 027/49351

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: MARTIN DERLETH ET AL.

Serial No.: 09/714,456

Examiner: J. Morrow

Filed: NOVEMBER 17, 2000

Group Art Unit: 3612

Title: DASHBOARD OF A PASSENGER MOTOR VEHICLE  
AND METHOD OF MAKING SAME

APPEAL BRIEF TRANSMITTAL

Mail Stop Appeal Brief - Patents  
Director of the United States  
Patent and Trademark Office  
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Sir:

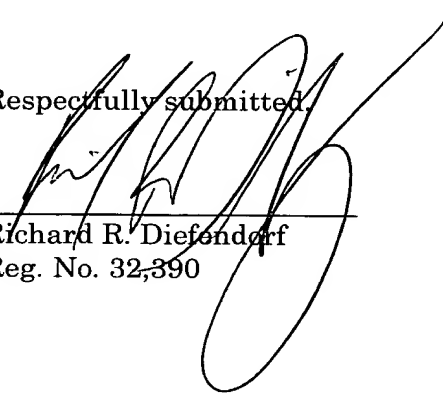
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Attached are three copies of an Appeal Brief, along with two copies of a Petition for Extension of Time (one month).

Also attached are two checks in the amounts of \$330.00 for the fee due under 37 C.F.R. §1.17(c) for filing the Appeal Brief and \$110.00 for the fee due under 37 C.F.R. §1.17(a) for the extension of time. Please charge any deficiencies, or credit any overpayments, to deposit account 05-1323 (027/49351). A copy of this transmittal is also attached.

Respectfully submitted,

January 5, 2004

  
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Real Party in Interest

The real party in interest is Behr GmbH & Co., Mauserstrasse 3, 70469 Stuttgart, Germany, by virtue of an assignment recorded in the U.S. Patent and Trademark Office at reel 011671, frame 0093.

Related Appeals and Interferences

No interferences or other appeals which would affect, be affected by, or have a bearing on a decision in this appeal are known.

Status of Claims

Claims 16-21 are pending in this application and are appealed. Claims 1-15 were canceled by way of the Reply filed November 9, 2001. An Appendix containing a copy of claims 16-21 is attached to this Appeal Brief.

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### Status of Amendments

No amendment subsequent to the final rejection set forth in the Office Action dated September 4, 2003 (Paper No. 30) has been filed.

### Summary of Invention

A concise explanation of the invention will now be provided. This explanation refers, by way of example only and without intending to limit the claims, to certain drawing figures and to paragraph and line numbers of the substitute specification included with the Reply filed November 9, 2001, or to line numbers of subsequently amended paragraphs of that substitute specification.

A passenger motor vehicle includes a vehicle windshield 10 and a crossmember 11 on which the vehicle windshield is mounted (see, for example, Figure 1 and paragraph 12, lines 1-4). A vehicle dashboard assembly, disposed behind the windshield 10 and in front of a vehicle passenger space, includes a housing part 13, provided with fastening structure 17, 18, and a cover part 19 having slotted recesses 23, 24 therein for receiving the fastening structure when the cover part is installed in the vehicle (see, for example, paragraph 16, lines 1-8). Thus, the housing part 13 is mounted to the vehicle body and the cover part 19 is thereafter detachably fixed to the housing part following installation of the windshield (see, for example, paragraph 15, lines 4-8). In this way, the cover part 19 is readily removable from the housing part 13 to provide for disassembly and repair, and easily replaceable on the housing part following the repair even though the windshield is installed already (see, for example, amended paragraph 6, lines 1-9).

The housing part 13 may be an upper part of a housing of a heating and/or air conditioning system (see, for example, paragraph 12, lines 5-8) and the fastening structure 17, 18 may include arms which are directed toward vehicle

sides. Together with the cover part 19, the arms form air channels 20, 21 when the cover part 19 is installed in the vehicle (see, for example, paragraph 13, lines 2-7). As best shown in Figure 3, the cover part can be a multilayered plastic molded part which includes a substrate 35 comprising EPP foam and a sound absorbing layer 36 (see, for example, paragraph 20, lines 2-22).

A method of making a passenger motor vehicle further provides that the fastening structure 17, 18 and the recesses 23, 24 are inclined toward the vehicle passenger space (see, for example, Figure 1 and paragraph 16, lines 3-8). Another cover part can be subsequently connected to the fastening structure 17, 18 so that the design can also be changed later (see, for example, amended paragraph 6, line 9).

#### Issue

The sole issue presented for review is whether claims 16-21 are unpatentable over U.S. Patent 4,559,868 to Nonaka et al.

#### Grouping of Claims

Claims 16 and 17 stand or fall together. Claim 18 is believed to be separately patentable from claims 16 and 17, however, and does not stand or fall together with claims 16 and 17.

Claims 19 and 20 stand or fall together, but are believed to be separately patentable from claims 16-18, and do not stand or fall together with claims 16-18. Finally, claim 21 is believed to be separately patentable from claims 16-20, and does not stand or fall together with any of claims 16-20.

#### Argument

I. The rejection of claims 16 and 17 under 35 U.S.C. §103(a) as being unpatentable over the Nonaka et al. patent is erroneous.

The Examiner considers the Nonaka et al. top or upper panel 6 to be a “cover part” and the Nonaka et al. top wall portion 29 to be a “housing part” as claim 16 defines. The Nonaka et al. top or upper panel 6, however, does not have or suggest providing “slotted recesses therein for receiving ... fastening structure” with which the wall portion 29 is provided as claim 16 requires. Although the Nonaka et al. wall portions 27 and 29 are provided with screws 51, 52 which form fastening structure, these screws 51, 52 are received in threaded bores rather than slotted recesses in the top or upper panel 6. The “slotted recess (around 49 in Fig. 2)” referred to by the Examiner receives nothing which fastens and, therefore, is not for receiving fastening structure as claim 16 defines.

There is also nothing in the Nonaka et al. patent disclosure which suggests that the upper panel 6 is or should be detachably fixed to the wall portion 29 “following installation of the windshield” so as to be “removable” and “replaceable” as claim 16 defines.

The features discussed above provide for ready removal and easy replacement of a cover part on a housing part so as to facilitate repair. The limitations in claim 16 directed to these features render the claimed invention unobvious in view of the Nonaka et al. instrument panel device. Claim 16 is patentable, and the rejection of claim 16 under 35 U.S.C. §103(a) is erroneous and should be reversed. The rejection of dependent claim 17 is erroneous for the same reasons and should also be reversed.

II. The rejection of dependent claim 18 as being unpatentable over the Nonaka et al. patent is erroneous for reasons discussed above in connection with claims 16 and 17 as well as the following reasons. Claim 18 depends on claim 17 and further specifies that “the cover part is a multilayered plastic molded part which includes a substrate comprising EPP foam and a sound absorbing layer.” The Examiner explicitly acknowledges that the Nonaka et al. patent does not disclose a cover part meeting these limitations. The Examiner, however, asserts,

without any documentary evidence, that “the use of the structure and materials recited” in claim 18 is well known in the art, and concludes, without any proper teaching, that it would have been obvious “to use such construction, as it provides a rigid panel with insulating (both thermal and acoustic) properties.” As noted in MPEP §2144.03(A), official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well known are capable of instant and unquestionable demonstration. The Examiner’s conclusion that a multilayered plastic molded dashboard assembly cover part including an EPP foam substrate and a sound absorbing layer is well known in the art is certainly questionable and does not constitute proper official notice. Nothing in the Nonaka et al. patent itself, and nothing else referred to by the Examiner, in any way suggests that the Nonaka et al. top or upper panel 6 (the “cover part”) is insufficiently rigid or has inadequate thermal and acoustic insulating properties. The modification to the Nonaka et al. top or upper panel 6 proposed by the Examiner in rejecting claim 18 is improper. Even assuming that the rejection of claims 16 and 17 discussed above is not erroneous, the rejection of claim 18 under 35 U.S.C. §103(a) is erroneous and should be reversed.

III. The rejection of claims 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over the Nonaka et al. patent is erroneous.

As noted in section I above, the Examiner considers the Nonaka et al. top or upper panel 6 to be a “cover part” and the Nonaka et al. top wall portion 29 to be a “housing part.” Again, however, the Nonaka et al. top or upper panel 6 does not have “slotted recesses therein for receiving ... fastening structure” with which the top wall portion 29 is provided. Claim 19 requires this feature. As discussed in section I, although the Nonaka et al. wall portions 27 and 29 are provided with screws 51, 52 which form fastening structure, these screws 51, 52 are received in threaded bores rather than slotted recesses in the top or upper panel 6. The “slotted recess (around 49 in Fig. 2)” referred to by the Examiner

receives nothing which fastens and, therefore, is not for receiving fastening structure as claim 19 defines.

There is also nothing in the Nonaka et al. patent disclosure which suggests mounting the windshield 5, mounting the wall portion 29, and subsequently detachably connecting the upper panel 6 so as to provide for the “removing”, “performing a repair”, and “subsequently connecting” operations defined by claim 19.

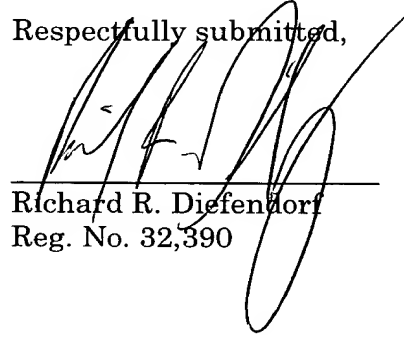
To reiterate, the features discussed provide for ready removal and easy replacement of a cover part on a housing part in order to facilitate repair. The limitations in claim 19 directed to these features render the claimed invention unobvious in view of the Nonaka et al. disclosure. Claim 19 is patentable, and the rejection of claim 19 under 35 U.S.C. §103(a) is erroneous and should be reversed. The rejection of dependent claim 20 is erroneous for the same reasons and should also be reversed.

IV. Finally, the rejection of dependent claim 21 as being unpatentable over the Nonaka et al. patent is erroneous for reasons discussed above in connection with claims 19 and 20 as well as the following reasons. Claim 21 depends on claim 20, which includes essentially the same limitations as claim 18 discussed in section II above. The modification to the Nonaka et al. top or upper panel 6 proposed by the Examiner in rejecting claim 20 is improper for the same

reasons discussed in section II. Even assuming that the rejection of claims 19 and 20 discussed above is not erroneous, the rejection of claim 21 under 35 U.S.C. §103(a) is erroneous and should be reversed.

Date: January 5, 2004

Respectfully submitted,



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Appendix

16. A passenger motor vehicle comprising:  
a vehicle windshield,  
a crossmember on which the vehicle windshield is mounted, and  
a vehicle dashboard assembly disposed behind the windshield in front of a vehicle passenger space,

said dashboard assembly including a housing part, provided with fastening structure, and a cover part having slotted recesses therein for receiving the fastening structure when the cover part is installed in the vehicle,

wherein the housing part is mounted to the vehicle body and the cover part is thereafter detachably fixed to the housing part following installation of the windshield, so as to be removable from the housing part to provide for disassembly and repair, and replaceable on the housing part following the repair even though the windshield is installed already.

17. The passenger motor vehicle according to claim 16, wherein the housing part is an upper part of a housing of a heating and/or air conditioning system, and wherein said fastening structure includes arms which are directed toward vehicle sides and, together with the cover part, form at least one air channel when the cover part is installed in the vehicle.

18. The passenger motor vehicle according to claim 17, wherein the cover part is a multilayered plastic molded part which includes a substrate comprising EPP foam and a sound absorbing layer.

19. A method of making a passenger motor vehicle comprising:  
mounting a vehicle windshield in a final position on a vehicle body,

mounting a housing part provided with fastening structure adjacent the vehicle windshield at a side of a vehicle passenger space facing the windshield, and

subsequently detachably connecting a cover part of a vehicle dashboard to the fastening structure,

wherein the cover part is provided with slotted recesses therein for receiving the fastening structure when the cover part is installed in the vehicle,

wherein the fastening structure and the recesses are inclined toward the vehicle passenger space, and

wherein detachably connecting the cover part provides for removing the cover part from the housing part even though the windshield is installed, performing a repair, and subsequently connecting either said cover part or another cover part to the fastening structure.

20. The method according to claim 19, wherein the housing part is an upper part of a housing of a heating and/or air conditioning system, and wherein said fastening structure includes arms and, together with the cover part, form at least one air channel when the cover part is installed in the vehicle.

21. The method according to claim 20, wherein the cover part is a multilayered plastic molded part which includes a substrate comprising EPP foam and a sound absorbing layer.